2026 Wisconsin Act 196: Changes to Wisconsin Law Governing Sheriffs

In the Board Room

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ATTOLLES LAW, s.c.

What are we going to cover?



1. The Office of Undersheriff
2. Chain of Command During Vacancy
3. Incapacity of a Sheriff
4. Changes to Deputy Discipline
5. Other Changes

The Office of Undersheriff



The Office of Undersheriff: Before Act 196

- Wisconsin statute required sheriffs (except in counties with a population of 750,000 or more) to appoint an undersheriff who was a resident of the county.

- In the case of a vacancy in the office of sheriff, the undersheriff would execute the duties of the office of sheriff until the vacancy was filled.

The Office of Undersheriff: Before Act 196

- Issue #1: Lack of uniformity developed among counties.
  - Attorney General opinions recognized ability of counties to eliminate office of undersheriff.
  - Some counties eliminated office of undersheriff and transferred duties and power to position of chief deputy sheriff.
    - The position of chief deputy sheriff was not referenced in statute, but could be created via civil service, ordinance, or collective bargaining agreement.
  - Some counties maintained both chief deputy sheriff and an unpaid appointed undersheriff who did not otherwise exercise authority except in absence of sheriff.

The Office of Undersheriff: Before Act 196

- Issue #2: What happens in the case of a vacancy?
  - Statute provided that in the event of a vacancy the undersheriff would execute the duties of the office of the sheriff.
  - What if no undersheriff?
    - Chief Deputy? Coroner? What if no coroner?
    - At least one Attorney General opinion concluded that Chief Deputy would execute the duties if office of undersheriff had been eliminated and responsibilities of undersheriff transferred to Chief Deputy.
    - Subsequent statutory changes and court decision undermined the reasoning of this opinion.

The Office of Undersheriff: Before Act 196

- Issue #3: Qualifications of Undersheriff
  - Only qualification imposed by statute was that the undersheriff be a resident of the county.
  - Attorney General Opinion from 1960 observed “that the practice of a sheriff appointing his wife as undersheriff has long been followed in this state.”
  - County Board concerns regarding nepotism and/or bias against women holding such offices may have played a role in various counties’ elimination of undersheriff office.

The Office of Undersheriff: After Act 196

- Requires appointment of undersheriff by the sheriff and prevents county board from eliminating the office of undersheriff. Wis. Stat. § 59.26(1), (3).
- Act 196 maintains prior requirement that the undersheriff be a resident of the county.
- Act 196 adds a new requirement that the undersheriff be a certified law enforcement officer or jail officer. Wis. Stat. § 59.26(1)(a).
- Undersheriff is also known as the chief deputy sheriff and has the same powers and duties as a deputy sheriff. Wis. Stat. § 59.26(2)(a).
- In the event of a vacancy in the office of sheriff, the undersheriff acts as sheriff. Wis. Stat. § 59.26(2)(b)1.

The Office of Undersheriff: After Act 196

- Act 196 builds in salary, tenure, and seniority protections for deputies serving as chief deputy when the law went into effect, but does not require that they be the new appointed undersheriff/chief deputy:

> If, on January 4, 2027, the chief deputy sheriff is a defined position under an ordinance or a collective bargaining agreement, a deputy sheriff then serving as chief deputy sheriff shall continue at the same salary and shall have the same tenure and seniority as to other deputy sheriffs that the person would have had if the chief deputy sheriff position had continued to be a civil service position or subject to the protections of a collective bargaining agreement. Notwithstanding the foregoing, a sheriff in a county described in this paragraph is not required to appoint the chief deputy sheriff to the appointive position of undersheriff.
>
> Wis. Stat. § 59.26(2)(c).

The Office of Undersheriff: After Act 196

- Under Act 196, the undersheriff may be removed at the pleasure of the sheriff. But Act 196 also builds in salary, tenure, and seniority protections for deputies who accept the appointed office of undersheriff.

The Office of Undersheriff: After Act 196

- "In counties in which the sheriff's office is under civil service, the sheriff and county shall place on leave of absence a deputy sheriff who is appointed by the sheriff to the position of undersheriff, upon the deputy's acceptance of the appointment. A deputy sheriff in a county under civil service who is placed on leave of absence under this subdivision shall immediately be returned to the position of deputy sheriff without loss of any rights under the civil service law upon completion of the appointment unless the deputy sheriff is otherwise disciplined under s. 59.265." Wis. Stat. § 59.26(1)(d)1.

The Office of Undersheriff: After Act 196

- "2. a. Except as provided in subd. 2. b., in counties in which the sheriff's office is not under civil service, a deputy sheriff who is appointed undersheriff shall upon completion of the appointive position be returned to the position of deputy sheriff. Upon the return to the position of deputy sheriff, the person shall be placed at a rank determined by the sheriff and paid the same salary and provided the same tenure and seniority the person would have received had the person not taken the undersheriff appointment." Wis. Stat. § 59.26(1)(d)2.a.
- "b. A sheriff may grant a deputy sheriff who is appointed undersheriff a leave of absence from the position of deputy sheriff. Upon completion of the appointive position, a person granted a leave of absence under this subdivision 2. b. shall be returned to the person's former position without loss of any rights under the civil service law." Wis. Stat. § 59.26(1)(d)2.b.

Chain of Command During Vacancy: Before Act 196

- When there was a vacancy in the office of sheriff, the undersheriff would perform the functions of that office until the vacancy is filled.
- If there was also no undersheriff, the coroner exercised the powers and duties of sheriff in all counties organized for judicial purposes until a sheriff was elected or appointed and qualified.
- What if no undersheriff office? What if no coroner?

Chain of Command During Vacancy: After Act 196

- When there is a vacancy in the office of sheriff, the undersheriff still performs the functions of that office until the vacancy is filled.
- If there is a vacancy in the office of sheriff and there is also no undersheriff, county clerk submits proof of the vacancy to the presiding circuit court judge. If the court determines the office is vacant, the court appoints a resident of the county to act as sheriff until the vacancy is filled. Wis. Stat. § 59.26(2)(b)3.
- The coroner no longer plays any role in this process.

Incapacity of the Sheriff: Before Act 196

- What happens if the Sheriff is unable to perform his or her duties due to some physical or mental incapacitation?
- This alone is not a vacancy under state law. Before Act 196, no statute addressed how to handle this situation or established a mechanism for transferring authority to someone else.

Incapacity of the Sheriff: After Act 196

- Act 196 provides that upon the incapacity of the sheriff, the undersheriff shall act as the sheriff until the sheriff is no longer incapacitated or a vacancy occurs. Wis. Stat. § 59.26(2)(b)2.
- "Incapacity under this subdivision shall be determined either by the sheriff or by the chief judge of the judicial administrative district in which the county is located. A petition to request the chief judge to declare incapacity shall be initiated by two-thirds vote of all supervisors entitled to seats on the county board and the chief judge shall hold any hearing and accept any evidence the chief judge deems appropriate. Any incapacity declared by the chief judge may be lifted upon application of the county board or sheriff following presentation of evidence the chief judge deems appropriate." *Id.*

Changes to Deputy Discipline

- Act 196 clarifies which procedures apply to deputy discipline.
- For counties with a county civil service commission under s. 63.01, discipline of deputy sheriffs must comply with s. 63.01. Wis. Stat. § 59.265(4)(b)2.
- For counties with a countywide civil service commission under s. 59.52(8), discipline of deputy sheriffs must comply with s. 59.52(8). Wis. Stat. § 59.265(4)(b)1.
- For all other counties, discipline is handled as set forth in s. 59.265(3), county ordinance, and collective bargaining agreement. Wis. Stat. § 59.265(3).

Changes to Deputy Discipline

- Act 196 makes some minor modifications to the procedures governing deputy discipline in counties that do not have a countywide civil service system or a civil service commission.
- Act 196 imposes a new two-week deadline for a deputy sheriff to request a hearing after receiving a notice of charges to be entitled to a hearing, unless a longer period is set forth in an applicable collective bargaining agreement. Wis. Stat. § 59.265(3)(f).
- Act 196 adds "suspension and demotion" as an express option to discipline a deputy in a county without a countywide civil service system.

Other Changes

- When the sheriff is a party to an action, before Act 196 the coroner was responsible for service and execution of process and the performance of related duties of the sheriff.
- In such situations, Act 196 shifts responsibility for service and execution of process and the performance of duties related to service of process from the coroner to the county clerk. Wis. Stat. § 59.23(2)(sm).

Other Changes (cont'd)

- Act 196 also makes changes to how medical examiners are appointed and terminated. Wis. Stat. § 59.38(5).
- In counties with an executive or administrator, the county executive or county administrator may appoint the medical examiner subject to confirmation by the board or contract with a qualified person to perform medical examiner services subject to board approval.
- In all other counties, the board appoints the medical examiner or contracts with a qualified person to perform medical examiner services.
- The medical examiner may be dismissed at any time by the appointing authority.

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QUESTIONS?





Thank You!

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